IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002172

First-tier Tribunal No: DC/50217/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 18 August 2023

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

FITIM KOLTRAKA

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

(NO ANONYMITY ORDER MADE)

Representation:
For the Appellant: Mr A. Chakmakjian, instructed by A J Jones Solicitors
For the Respondent: Mr N. Wain, Senior Home Office Presenting Officer

Heard at Field House on 27 July 2023

DECISION AND REASONS

1. The appellant appealed the respondent's decision dated 15 September 2022 to deprive him of British citizenship with reference to section 40(3) of the British Nationality Act 1981 ('BNA 1981') on the ground that he obtained citizenship by fraud, false representation, or the concealment of a material fact. The appeal was brought under section 40A(1) BNA 1981.

2. First-tier Tribunal Judge Adio ('the judge') dismissed the appeal in a decision sent on 15 May 2023. The judge summarised the respondent's reasons for depriving nationality on the ground that the appellant made an asylum claim in a false identity in June 2003. The appellant falsely claimed to be from Kosovo, when in fact he is an Albanian citizen. The appellant falsely claimed to be born on 23 August 1989, claiming to be 13 years old at the date of the application, when in fact he was born on 23 April 1985 and was 18 years old. The appellant was refused asylum but was granted Discretionary Leave to Remain as an unaccompanied minor. The appellant made applications for further leave to remain and for naturalisation in the same false identity.

3. The judge noted the arguments made by counsel who represented the appellant at the First-tier Tribunal hearing (not Mr Chakmakjian), that the decision in *Ciceri (deprivation of citizenship; delay)* [2020] UKUT 238 (IAC) was wrongly decided because the Supreme Court in *R (on the application of Begum) v SIAC & Ors* [2021] UKSC 7 did not give direct guidance on the scope of an appeal under section 40(3) BNA 1981. However, the judge considered that the decision in *Ciceri* should be followed.

4. The judge went on to consider whether it was open to the respondent to find that the condition precedent contained in section 40(3) was met. He found that the appellant had obtained leave to remain by deception. He had continued the deception in subsequent applications, including the application for naturalisation. For this reason, the judge concluded that the deception was material to the grant of British citizenship and agreed with the respondent's assessment. The appellant was required to disclose any matters that might go to the 'good character' requirement in the application but failed to do so [15]. The judge rejected the argument that the deception relating to the appellant's age and nationality was not material to the grant of citizenship [16]-[17].

5. The judge went on to consider whether the reasonably foreseeable consequences of the decision to deprive the appellant of British citizenship would breach his right to private and family life under Article 8. He accepted that the appellant had an established family life with his wife and children in the UK. The judge considered the evidence produced on behalf of the appellant, which indicated that the limbo period after appeal rights were exhausted and consideration of whether it would be appropriate to grant leave to remain was likely to be much longer than the eight-week period stated in the decision letter. A Freedom of Information Request dated 31 August 2021 stated that, at that time, it was taking an average of up to 303 days to grant limited leave after appeal rights had become exhausted [21].

6. The judge considered the evidence relating to the appellant's family situation. He noted that their monthly outgoings included a mortgage of around £983.11 a month and various other bills and expenses. The estimated monthly expenditure of the family was £2,294.11. The combined income of the appellant and his wife was £2,654. The evidence was that the appellant's wife currently worked from 9.00am to 3.00pm. Her income was significantly lower than that of the appellant. She would only be able to work an additional three hours a day, which would not be enough to make up for the shortfall in income [21].

7. The judge went on to consider the decision in *Muslija (deprivation: reasonably foreseeable consequences)* [2022] UKUT 337 (IAC). In fact, he cited the whole of the headnote, which included the guidance that the mere fact that the limbo period might be lengthy, without more, is unlikely to be sufficient to outweigh the public interest in deprivation [22]. The judge accepted that there might be a lengthy limbo period in this case but took into account the fact that the appellant had savings of £8,000-£9,000. He also had additional funds in his business account.

8. The judge accepted that the respondent had not considered the best interests of the children in any detail but went on to consider the situation himself [24]. He went on to conduct a balance sheet assessment of factors in favour of the public interest and those in favour of the appellant. He placed weight on the public interest in deprivation in circumstances where the appellant's whole immigration

history was based on a fraud [25]. The judge went on to find that there would no doubt be emotional upset for the children who might become worried if they became aware of the situation. He acknowledged that not being able to work during the limbo period would also affect the family. The appellant's income from his business was around £30,000 a year. He had some savings and some cash assets in his business at the date of the hearing. The judge was satisfied that the appellant was likely to be able to 'manage with his resources for the period of time it would take the Respondent to make a decision' [26]. The children remained British citizens and the appellant's wife could increase her hours of work. Whilst acknowledging that this might be difficult, the judge did not accept that the family would face destitution [27]. Having considered the points for and against deprivation, the judge concluded that the factors raised in favour of the appellant did not outweigh the public interest in deprivation [28].

9. The appellant applied for permission to appeal to the Upper Tribunal on the following grounds:

(i) The First-tier Tribunal failed to determine whether the respondent's decision was unlawful on public law grounds: *Ciceri* and *Chimi (deprivation appeals; scope and evidence) Cameroon* [2023] UKUT 115 referred. In particular, the judge failed to consider the best interests of the child and the longer than stated limbo period that the appellant was likely to face following deprivation.

(ii) The First-tier Tribunal failed to make adequate findings relating to the assessment under Article 8 ECHR. The judge failed to adequately consider the impact that the lengthy limbo period would have on the family even if his wife worked longer hours.

10. I have considered the First-tier Tribunal decision, the evidence that was before the First-tier Tribunal, the grounds of appeal, and the submissions made at the hearing, before coming to a decision in this appeal. It is not necessary to summarise the oral submissions because they are a matter of record, but I will refer to any relevant arguments in my findings.

Decision and reasons

11. Both grounds appear to make essentially the same complaint about the judge's failure to adequately consider the best interests of the children and/or the impact of any limbo period before a decision would be made in relation to leave to remain. However, it is unclear on what basis the two points made in the original pleadings are distinguishable.

12. Following recent decisions in *Begum*, *Ciceri*, and *Chimi*, a court or tribunal should consider whether the Secretary of State's decision relating to the condition precedent required under section 40(3)(a)-(c) to deprive a person of citizenship is lawful with reference to the full range of administrative law grounds before going on to consider human rights issues.

13. A decision to deprive a person of citizenship is not a human rights decision. Nor is an appeal under section 40A(1) BNA 1981 based directly on human rights grounds. However, the Secretary of State's exercise of discretion under section 40(3), denoted by the word 'may' rather than 'must', is subject to the duty under section 6 of the Human Rights Act 1998 ('the HRA 1998') not to act in a way

which is incompatible with a right under the European Convention of Human Rights ('ECHR'). A court or tribunal which is also subject to the same duty can consider for itself whether the reasonably foreseeable consequences of deprivation are likely to amount to a breach of a right under the ECHR. It is only in this limited way that human rights issues can be considered in an appeal against a decision to deprive a person of citizenship.

14. Mr Chakmakjian argued that any deficiencies in the respondent's decision in relation to human rights could amount to a public law error. He pointed out that an assessment based on administrative law principles would be made with reference to the situation at the date of the decision, whilst a judge's substantive assessment of human rights issues would be assessed at the date of the hearing. This argument does not appear to be consistent with the general approach suggested in *Ciceri* and *Chimi*.

15. In practice there would appear to be no point in challenging the exercise of discretion with reference to human rights grounds on administrative law principles because the tribunal can consider the substance of any human rights arguments and decide for itself whether the decision to deprive is unlawful under section 6 HRA 1998. Whether a decision is lawful on human rights grounds is likely to be determined by the substantive assessment undertaken by the tribunal rather than an assessment on administrative law principles. Pointing out a technical deficiency in the decision letter is unlikely to make any material difference to the appeal if a judge has concluded that the decision to deprive would not in any event be unlawful under section 6 of the HRA 1998. Conversely, if a judge concluded that deprivation would amount to a breach of human rights any technical deficiency in the decision letter would also be immaterial.

16. The first ground argues that the judge failed to make any clear finding as to whether there as a public law error, but only refers to issues that were relevant to the human rights assessment. It does not challenge the judge's findings relating to the precedent facts contained in section 40(3)(a)-(c) BNA 1981. The appellant admitted that he provided false information when he claimed asylum and continued to make applications in that false identity, including in the application for naturalisation. The Secretary of State was satisfied that, but for the appellant's fraud, false representation, or the concealment of a material fact, he would not have met the good character requirement to be naturalised as a British citizen. It was open to the judge to agree with that finding. It is clear from his conclusion at [17] that he considered this issue within the rubric of 'the public law challenge approach'.

17. The second ground amounts to a disagreement with the findings. The judge considered the arguments made about the possible length of the limbo period and the difficulties that the appellant and his wife might face if their income is reduced for a temporary period. He was aware of the potential length of that period because he quoted the Freedom of Information request in full at [21]. The mere fact that the family might face some challenges in a limbo period, in itself, is not sufficient to render the decision disproportionate: see *Muslija*. Any difficulties they might face because of deprivation would arise as a direct result of the appellant's original false application and ongoing deception, which allowed him to be naturalised as a British citizen. Some difficulty or even hardship might still be a proportionate response to the public interest in depriving a person of citizenship. The judge considered the circumstances, including the wife's income and access to savings. He was satisfied that the appellant and his family were not

likely to face destitution during the limbo period and that it would be proportionate to expect them to make adjustments. That finding was within a range of reasonable responses to the evidence.

18. But for their father's deception, the children might not be British citizens. Nevertheless, the children themselves will not be deprived of that status. The argument relating to the appellant's children was inextricably tied up with the point about the difficulties that the family might face during the limbo period if the parent who earned the most income was not permitted to work. Save for a general statement of concern by the appellant's wife about the impact that reduced financial circumstances might have on the children, no other specific circumstances appear to have been identified. The grounds do not particularise any specific issues that the children would face over and above their parents' concern about how they might meet their expenses during a period of uncertainty. For this reason, the point relating to the children stands or falls with the argument relating to the limbo period. The judge considered the position of the children, including the emotional impact, and came to conclusions that were open to him on the limited evidence [26]-[29].

19. For the reasons given above, I conclude that the grounds do not disclose any errors of law in the First-tier Tribunal decision. The decision shall stand.

Notice of Decision

The First-tier Tribunal decision did not involve the making of an error of law

M.Canavan
Judge of the Upper Tribunal
Immigration and Asylum Chamber

14 August 2023